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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

ALMONT AMBULATORY SURGERY
CENTER, LLC; *et al.*,

Plaintiffs,

v.

UNITEDHEALTH GROUP,
INCORPORATED; *et al.*,

Defendants.

UNITED HEALTHCARE SERVICES,
INC.; *et al.*,

Counterclaim Plaintiffs,

v.

ALMONT AMBULATORY SURGERY
CENTER, LLC; *et al.*,

Counterclaim Defendants.

Case No 2:14-cv-03053-MWF(VBKx)

**COUNTERCLAIM PLAINTIFFS'
MEMORANDUM OF POINTS
AND AUTHORITIES IN
OPPOSITION TO DEVIDA USA
LLC'S MOTION TO DISMISS
THE SECOND AMENDED
COUNTERCLAIM**

DATE: Sept. 17, 2015
TIME: 3:00 pm
DEPT.: Courtroom 16

(Superior Court of the State of
California, County of Los Angeles,
Central District Case Number:
BC540056)

Complaint filed: March 21, 2014

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INTRODUCTION

The Second Amended Counterclaim (“SACC”) alleges that Counterclaim Defendant DeVida USA LLC (“DeVida”) conspired with the other individual and Corporate Counterclaim Defendants to defraud both United and hundreds of the group health plans it administers. Among other types of frauds and billing manipulations, the SACC alleges that the Omid-controlled Providers induced 2,000 patients into receiving services from them by promising to waive co-pays, co-insurance, deductibles, and other amounts due under the terms of the participants’ plans (“Member Responsibility Amounts”). The SACC further alleges that three Omid-controlled and -owned Billing Entities, including DeVida, then submitted fraudulent bills that affirmatively misrepresented the “total charges” due.¹ In yet other instances, these same Providers told patients—falsely—that their health plans covered Lap Bands, knowing that their plans provided no such coverage. Only after these patients endured a battery of preparatory tests, for which the Providers billed United millions, did the Providers finally inform those United Members that they were not covered for Lap Band surgery. Among the 2,000 members who received co-pay waivers, United has identified 40 specific instances of fraud—to which no Counterclaim Defendant has thus far sought to dismiss—in which these, and other misrepresentations, manipulations, and deceptions have occurred.²

Like the other Billing Entities, DeVida played a key role in perpetrating the fraud against United. SACC ¶ 53. United alleges that DeVida was one of three

¹ The two other Billing Entities are Surgery Center Management LLC and Independent Medical Services, Inc. *See* SACC ¶ 53. Those two Counterclaim Defendants joined in the Providers’ Motion to Dismiss the Second Amended Counterclaim, but declined to argue that United had somehow failed to comply with Rule 9(b) specifically as to the Billing Entities’ role in the fraud. *See* Providers’ Mot. [Dkt. No. 168].

² The Counterclaim Defendant Providers, Cindy, Julian, and Michael Omid, and Property Care Insurance, Inc. filed separate motions to dismiss the SACC to which DeVida joined. United likewise incorporates its responses to these motions, here.

1 Counterclaim Defendants that made up the centralized billing and collections office
2 that submitted interchangeable and fraudulent claim forms to United. *Id.* ¶ 56.
3 Specifically, employees of DeVida, including co-conspirator and DeVida agent
4 Levi Green, submitted bills on behalf of various Counterclaim Defendant Surgery
5 Centers and affiliated providers. *Id.* ¶ 436(h)(iii). These bills systematically
6 included “charges” or “total charges” that fraudulently “included the Member
7 Responsibility Amounts, even though the Counterclaim Defendant Surgery Centers
8 and other affiliated providers had previously told the patients that Member
9 Responsibility Amounts would be waived.” *Id.* ¶ 72. This Court has previously
10 recognized that such a billing scheme may constitute fraud. Provider FACC Order
11 [Dkt. No. 145] at 26-29.

12 In its motion to dismiss the SACC, DeVida fails to offer arguments that
13 Cindy Omidia has not already raised—that is, that United has somehow lumped
14 DeVida in with the other Counterclaim Defendants, and that the SACC does not
15 meet Rule 9(b) as to the fraud and conspiracy counts.³ DeVida’s motion fails for
16 the same reasons that Cindy Omidia’s motion fails. Here, United sufficiently alleges
17 that DeVida submitted fraudulent claims to United on behalf of the Omidia-
18 controlled Providers in a complex and long-running healthcare fraud. United
19 should therefore, be permitted to raise claims against DeVida to rectify this fraud.
20 This Court should deny its motion to dismiss.

21 **ARGUMENT**

22 **I. The SACC Properly Distinguishes DeVida’s Role in the Fraud**

23 Like Cindy Omidia, DeVida claims that the SACC does not identify its role in
24 the fraud. The SACC is clear, however, DeVida was a Billing Entity that
25 intentionally and fraudulently submitted claim forms to United on behalf of Omidia
26 Network Providers. SACC ¶ 72. United further alleges that DeVida, along with

27 ³ DeVida failed to challenge the sufficiency of United’s ERISA and conversion
28 claims. Accordingly, those claims directed to DeVida survive regardless of the
resolution of its motion to dismiss.

1 two other Billing Entities submitted claim forms to United interchangeably on
2 behalf of the Omid-controlled providers, (*id.* ¶ 53), no doubt in part as a means of
3 concealing the true nature of the claim.

4 Without any basis in the law, DeVida believes that United should not be able
5 to classify DeVida as a Billing Entity. But this has no grounding in Rule 8.
6 *McHenry v. Renne*, 84 F.3d 1172, 1175 (9th Cir. 1996) (Rule 8(a) simply requires
7 that the complaint must “make clear connections between specific allegations and
8 individual defendants.”). Moreover, once a pleading “has adequately identified a
9 particular defendant with a category of defendants allegedly responsible for some
10 continuing course of conduct,” Rule 9(b) (and therefore, Rule 8 as well) permits a
11 plaintiff to plead the collective conduct of the defendants. *In re Equity Funding*
12 *Corp. of Am. Sec. Litig.*, 416 F. Supp. 161, 181 (C.D. Cal. 1976). Purportedly in
13 support of its “lumping” argument, DeVida’s brief borrows liberally from Cindy
14 Omid’s brief—it cites identical cases while making identical arguments. But as
15 United identified in its opposition to Cindy Omid’s brief, the plainly deficient
16 pleadings discussed in DeVida’s (and Cindy Omid’s) cases bear no resemblance to
17 the SACC. United incorporates its opposition to Cindy Omid’s brief, here. *See*
18 *United Oppo. to C. Omid Mot.*, Section I.

19 DeVida also complains that the SACC does not provide sufficient
20 information regarding the “free” seminars for which patients were nonetheless
21 billed or the telephonic psychological examinations that were subsequently billed as
22 face-to-face evaluations. DeVida Mot. at 10. But the exemplar members provide
23 the detail DeVida alleges is missing. *See, e.g.*, SACC ¶¶ 138, 164, 206 (alleging
24 United Members 17, 20, and 25 were promised “free” initial consultations); *id.* ¶¶
25 124, 356 (alleging United Members 8 and 11 were billed for a face-to-face
26 psychological examination that either never occurred or was conducted over the
27 phone). DeVida and the other Billing Entities played a role in executing this
28 species of fraud by misrepresenting to United the services provided. *Id.* ¶¶ 124,

142, 168, 209, 357. No party, including DeVida has questioned the particularity of the fraud alleged with respect to the SACC's 40 exemplar members.

II. The Court Should Reject DeVida's Specific Arguments Regarding the Fraud and Conspiracy Allegations

A. United Adequately Pleads DeVida's Role in the Fraud

DeVida adds nothing to its Rule 9(b) argument that it did not already make in its Rule 8 "lumping" argument—DeVida still takes issue with United calling it a Billing Entity. But Rule 9(b), like Rule 8, does not demand that United identify "the specific person who filled out the form, and on what authority they filled out the form," as DeVida apparently believes. DeVida Mot. at 2. Rather, a "pleading is sufficient under [R]ule 9(b) if it identifies the circumstances constituting fraud so that a defendant can prepare an adequate answer from the allegations." *Moore v. Kayport Package Express, Inc.*, 885 F.2d 531, 540 (9th Cir.1989).

Other courts to consider complex, long-running conspiracies to defraud have found that Rule 9(b) does *not* require a recitation of every alleged fraudulent transaction, let alone facts identifying employee names.⁴ Such a standard would likely bar from federal court any sophisticated healthcare-fraud case like the one at issue here. Rule 9(b) does not require anything more than United's well-pleaded allegations. *See* United Oppo. to C. Omid Mot., Section II; *see also* *Berson v. Applied Signal Tech., Inc.*, 527 F.3d 982, 989-90 (9th Cir. 2008); *Nutrishare, Inc. v. Conn. Gen. Life Ins. Co.*, 2014 WL 1028351, at *4 (E.D. Cal. Mar. 14, 2014); *Fustok v. UnitedHealth Grp., Inc.*, 2013 WL 2189874, at *5 (S.D. Tex. May 20, 2013); *United States v. Summit Healthcare Ass'n, Inc.*, 2011 WL 814898, at *5 (D. Ariz. Mar. 3, 2011).

⁴ Although it is not required to identify employees, United has identified more than a dozen individuals on the Omidis' payroll that have conspired to defraud United, including billers such as Levi Green, Araminta Salazar, and Yesenia F. SACC ¶¶ 436(h)(iii), 475(f).

1 **B. United’s Fraud Allegations Need Comply Only With Rule 9(b)**

2 Like Cindy Omid, DeVida argues for a heightened Rule 9(b) standard
3 sometimes applied by California state courts to allegations of fraud perpetrated by
4 *corporate* actors. DeVida Mot. at 9-11 (citing *Lazar v. Superior Court*, 12 Cal. 4th
5 631, 645 (1996) and *Tarmann v. State Farm Mut. Auto. Ins. Co.*, 2 Cal. App. 4th
6 153, 157 (1991)). As explained in detail in United’s opposition to Cindy Omid’s
7 Motion to Dismiss, *see* Section II.B., there is scant support for a more stringent
8 standard, particularity for allegations of fraud by corporate actors brought in federal
9 cases that are guided by Rule 9(b) as opposed to state pleading rules. Moreover,
10 courts often *relax* Rule 9(b) when the allegations, like those in the SACC, indicate
11 that “the defendant must necessarily possess full information concerning the facts
12 of the controversy” or “the facts lie more in the knowledge of the opposite party.”
13 *Tarmann*, 2 Cal. App. 4th at 158; *see also Wool v. Tandem Computers, Inc.*, 818
14 F.2d 1433, 1439 (9th Cir. 1987) (*overruled on other grounds*). And, as explained
15 above, United expressly alleges facts about the role—as an Omid Network Billing
16 Entity—that DeVida played in the scheme.

17 **C. DeVida Does Not Dispute That United Has Raised a Conspiracy**
18 **Claim**

19 Unlike Cindy Omid, DeVida does not dispute that the SACC properly
20 alleges that it joined the other Counterclaim Defendants in an ongoing conspiracy
21 to defraud United. It argues only that United has failed to state an underlying fraud
22 claim, DeVida Mot. at 12, which for the reasons expressed above, must be rejected.

23 **CONCLUSION**

24 United respectfully requests that the Court deny DeVida’s Motion to
25 Dismiss.

1 Dated: September 3, 2015

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8 Dated: September 3, 2015

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